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No. 99-1908

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

JAMES ALEXANDER, Director, Alabama Department of Public Safety, et al.,

Petitioners,

v.

MARTHA SANDOVAL, Individually and on Behalf of All Others Similarly Situated,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF AMICUS CURIAE

Central Puget Sound Regional Transit Authority (hereinafter "Sound Transit") is a limited purpose government entity with authority to plan and construct high capacity transportation systems in a three county area in western Washington State. RCW 81.104 and RCW 81.112. Sound Transit has within its authority certain powers including, for example, taxation and condemnation, typical of other cities and counties in the State of Washington. The extent of its jurisdiction runs from Everett in Snohomish County, Washington, through Seattle, King County, Washington, and south to Tacoma, Pierce County, Washington. Sound Transit qualifies as a "similar entity" to a "city, county, town" pursuant to Rule 37(4). Desmond Brown, General Counsel for Sound Transit, is Sound Transit's authorized law officer. Accordingly, this Amicus Curiae brief may be filed without motion pursuant to Rule 37(4).

Sound Transit is currently a defendant in a lawsuit alleging, among other claims, a disparate impact claim under Title VI §602 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Save Our Valley v.

Sound Transit, et al, U. S. Dist. Ct., W.D. Wash., No. C00-0715R. As described below, Sound Transit is significantly differently situated than the Petitioners in this case. Thus, by describing the disparate impact claim alleged against Sound Transit and why as a practical matter such a claim should fail, Sound Transit brings a unique perspective to the issue presented for review that is not addressed by the Petitioner or another amicus curiae.

SUMMARY OF ARGUMENT

Federal funds support a broad range of projects which are thus subject to the dictates of Title VI of the Civil Rights Act of 1964. Certain of these projects, such as the siting of large transportation systems, inherently result in impacts in the communities served by the project. Moreover, to the extent such projects seek to reach out to serve minority communities in otherwise predominately white jurisdiction, impacts from projects are likely to create statistical disparities. Thus, simply providing service to a minority community can create alleged disparate impacts sufficient to raise a prima facie Title VI §602 claim even though providing that service results in significant benefits to the minority community. Recognizing a broad

private right of action under Title VI § 602 thus creates disincentives for providing service to minority communities, a result that could not have been intended by Congress. Moreover, recognizing a private right of action unnecessarily injects the federal courts into the delicate political process of evaluating the benefits and burdens of large public projects.

The federal administrative oversight created under Title VI § 602 provides appropriate and sufficient assurance that federal funds not support discriminatory programs. The power of the federal purse and the exercise of expertise by federal agencies are more than sufficient means to assure that the local political process proceeds without discrimination and consistent with congressional intent. A private judicial remedy is not necessary.

ARGUMENT

Sound Transit submits this Amicus Curiae brief in support of Petitioners' argument that this Court should not recognize a private right of action under §602 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. The Petitioners and other supporting Amici have set out the legal arguments demonstrating why a private right of action should not

be recognized. Sound Transit will not repeat those arguments here. Sound Transit instead describes why recognizing a private right of action makes no sense and is contrary to congressional intent using its own experience siting a complex transportation system as an example.

I. LARGE PUBLIC PROJECTS SUCH AS TRANSPORTATION SYSTEMS HAVE INHERENT IMPACTS THAT SHOULD NOT GIVE RISE TO A FEDERAL CIVIL RIGHTS CLAIM

Unlike the placement of a single facility, such as a landfill, or adoption of a policy not involving physical placement of facilities, such as the case at bar, siting of transportation facilities necessarily involves creating impacts to any neighborhood to be served by the proposed transportation system. Thus, neighborhoods served by a new transportation system likely will suffer property displacements, noise, traffic, construction and like impacts. Ironically, the more service a government provides to a neighborhood with a greater corresponding benefit, the more impacts the government creates.

Moreover, if a government entity whose jurisdiction is overwhelming white seeks to serve a minority neighborhood, artificially high statistical impacts are created simply as a consequence of the decision to serve the minority neighborhood. Again, the more

intense the service provided to the minority community, the greater the apparent statistical disparity.

Thus, the siting of transportation system may appear to create disparate impacts. But the alleged disparity results solely because of the characteristics of the transportation system to be sited and the demographics of the areas that will be served. If a private right of action is recognized under § 602, government entities seeking to build complex facilities, such as transportation systems, will face costly, lengthy and uncertain legal challenges to decisions made that provide significant benefits to minority communities. The unintended result will be to discourage decisions to serve such communities.

Sound Transit's construction of a new light rail system exemplifies the problem. As noted above, Sound Transit is a limited purpose government entity with authority to plan and construct high capacity transportation systems. Sound Transit was created by way of public vote. The vote also authorized the imposition of taxes to pay for a new transportation system consisting of a new light rail line running from the University District in Seattle south to Seattle-Tacoma International Airport, a commuter rail line and a series of express

buses.

One of Sound Transit's principal tasks is the selection of the best alignment for its light rail system. Sound Transit is being sued under Title VI § 602 because of the alleged disparate impact of its decision where and how to align the light rail line system. The alleged disparity, however, results solely because of the nature of a light rail system and the demographics of the areas that the light rail system will serve.

Specifically, the claims against Sound Transit arise out of Sound Transit's decision to align a light rail route through the Rainier Valley in Seattle, Washington. The Rainier Valley is one of the most racially diverse areas in the Sound Transit district. The entire Sound Transit district is 16% minority and 84% white. Rainier Valley, in contrast, consists of three neighborhoods comprised of minority populations of 85%, 73% and 68%. Where such great demographic disparity exists, it be comes self-evident that providing service to a community such as Rainier Valley will inevitably result is statistical disparity in impacts. In fact, the greater the service provided, the greater the disparity. If a private right of action is recognized under

Title VI § 602, such disparity may in and of itself give rise to a prima facie case. A government may thus be thrust into court without regard to the benefits provided to the minority community and without regard to the political process governments must engage in to determine where to provide service.

Siting the alignment of a new light rail alignment in an existing urban landscape is a complex process that requires the elected branches of government to balance numerous and often conflicting objectives and ultimately to make difficult choices. For example, in the early 1990s the initial recommendation was to connect downtown Seattle to Seattle-Tacoma Airport in the quickest and least expensive manner by siting the route through an industrial area and to bypass and not serve the Rainier Valley. However, after significant community activism and political debate, this initial siting recommendation was reconsidered and ultimately reversed. Instead, an alignment was recommended through the Rainier Valley even though the Valley alignment was thought to be a more expensive and slower route to the airport. Central to the decision to site the route through the Rainier Valley was a desire to provide increased transportation benefits to

Rainier Valley residents and connect the Rainier Valley to the rest of Seattle.

Similar policy considerations were involved in deciding whether to build the alignment in a tunnel or at-grade in the Rainier Valley. Although a tunnel would provide faster travel times to the airport, it would not provide the benefits associated with an at-grade system that many policymakers desired for the Rainier Valley. The benefits from an at-grade alignment include significant streetscape improvements and other transit related development that is hoped to result in increased visibility for the community as a viable and desirable location for businesses and residents to grow and thrive. Additionally, the ability to fund the alignment has been a major consideration. A tunnel profile in the Rainier Valley would cost $400 million more than an at-grade profile.

In summary, governmental decision-makers felt that the Sound Transit project will substantially benefit the minority residents living within the Rainier Valley. After light rail service commences, for example:

- Rainier Valley residents' access to educational institutions will double and their access to health care facilities will increase by 24 percent.
- The Rainier Valley will have more new stations serving the community than any other area in the system.
- Rainier Valley residents will have nearly 200,000 more jobs accessible by transit within a one hour ride as compared to today.
- Transit access and travel-time savings will be increased for the Rainier Valley community to a greater degree than for any other part of the system. Currently, the per capita rate at which Rainier Valley residents ride the bus is one of the highest rates of any neighborhood in the region; 20 percent of Valley residents do not have access to a car. Once light rail service begins, the average transit travel-time savings for residents in Rainier Valley will be 18 minutes, a 31 percent improvement over today.
- Streetscape improvements along the route will enhance pedestrian connections to light rail stations, the Columbia City business district, and the Rainier Beach community.
- A $50 million Transit-Oriented Community Development Fund will be provided for the Rainier Valley in order to mitigate any impacts of project implementation and operation.

But as noted above, these benefits necessarily come with associated impacts from providing light rail service. Save Our Valley has alleged that these inevitable impacts, such as displacements, noise, and traffic safety, are disparate and give rise to a Title VI claim.

A way to avoid alleged disparities in, e.g., displacements would be to attempt to strike some absurd numerical equilibrium between minority and non-minority displacements. Thus, Sound

Transit would have to construct an alignment through the Valley that is designed to wend its way through the community and twist and curve in an effort to displace as many non-minority residential units as minority units, or to deliberately displace more non-minority persons in other parts of the system to "balance out" the number of overall displacements. Thus, rather than balancing competing interests and deciding the location and design of the alignment based on legitimate public transportation policy objectives, the application of Title VI § 602 would cause these decisions to be driven by conscious racial gerrymandering considerations of the worst kind.

Of course, the simplest solution would be to relocate the route to another area and not to serve the Rainier Valley at all. Clearly, Title VI was never intended to cause governments affirmatively to consider race as the predominate factor in designing transportation projects, and worse, to design such projects to avoid, at all cost, any impacts to minorities in order to ensure that Title VI is not violated. Yet that is precisely the consequence of adopting a broad private right of action under Title VI § 602.

The absurdity of applying Title VI § 602 to situations such a

Sound Transit's is amplified by the difficulty in attempting to craft a remedy. What would be the appropriate remedy? To halt the project and prevent the citizens of the Puget Sound region from benefiting from an essential component of the most expansive and integrated transportation system the region has ever known? To prevent the construction of an alignment through the Rainier Valley and thereby prevent the citizens of the Valley from being served as an equal partner in this tri-county system? Or to spend an *additional* $400 million to construct a tunnel in the Rainier Valley rather than an at-grade profile, and thereby jeopardize the economic viability of the entire project?

Given the heterogeneity of locations, topography, environments, and demographic compositions, no transit project will ever impose each of its impacts in a precisely identical fashion on each racial group. Congress could not have intended to authorize federal agencies to refuse to fund projects unless the project impacts were equalized for each racial group. Such a rule would require that the minority and white population of each neighborhood served by the project be evenly distributed across the entire alignment. The reality

of urban life is that certain neighborhoods have significantly higher concentrations of minority populations than other neighborhoods. Consequently, a rule requiring equal distribution of each impact on minority and non-minority populations would make it impossible to fund projects such as Sound Transit's that serve areas with relatively high numbers of minority residents. As Seattle aptly illustrates, no American city has such ethnically diverse neighborhoods so as to permit the equal distribution of each project impact among different racial groups.

Title VI was not intended to require that federally funded programs impose identical and proportional burdens on different racial groups, or to remedy social factors that lead to non-identical burdens. As this Court noted in a similar context in regard to employment discrimination, "[a] Title VII plaintiff does not make out a case of disparate impact simply by showing that, 'at the bottom line,' there is a racial imbalance. . . . To hold otherwise would result in employers being potentially liable for 'the myriad of innocent causes that may lead to statistical imbalances in the composition of their work forces.'" Wards Cove Packing Co. v. Atonio, 490 U.S. 642, 657 (1989); see also

African American Legal Defense Fund, Inc. v. New York State Department of Education, 8 F. Supp. 2d 330, 338 ("[O]ne cannot look to Title VI's regulations for remedy for any alleged disparate impact of [a school funding formula based on student attendance]. . . . Here, the 'grantees' are the school districts, and clearly it is not their practices that have produced the absenteeism. Accordingly, Title VI's regulations support no action at law upon those factors.").

This important distinction – between prohibiting discrimination and assuring substantively identical treatment – has been aptly stated by the U.S. Court of Appeals for the Fourth Circuit. In a recent case addressing the potential application of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 et seq., to federally funded transportation projects, the court noted:

> [T]he Association argues that the underlying purpose of the Fair Housing Act "is that similarly situated residents are entitled to the equal distribution of benefits," and therefore that "residents also must be entitled to the equal distribution of burdens." This proportional burden theory is an unmanageable proposition. Under the Association's standard, how is a multicultural society ever to locate a highway? Suppose a roadway runs by a neighborhood that is thirty-five percent Anglo, forty-five percent

Latino, and twenty percent African American. Does the predominant ethnic group have a disparate impact claim? What if thirty-five percent of a route runs proximate to a predominantly Asian American neighborhood and twenty-five percent next to a predominantly Hispanic American neighborhood? Will planners have to relocate the corridor to ensure that it affects each ethnicity proportionally? Simply to put the question is to demonstrate the absurdity of the result: a twisting, turning roadway that zigs and zags only to capture equally every ethnic subset of our population. Such a standard would lead to race-based decisionmaking of the worst sort. We do not think the drafters of the Fair Housing Act ever contemplated such a reading.

Jersey Heights Neighborhood Assoc. v. Glendening, 174 F.3d 180, 193-94 (4th Cir. 1999) (emphasis added). The Fourth Circuit's conclusion applies equally to Title VI. Yet allowing inherent statistical disparity that results from providing significant transportation services to a minority community to form the basis of Title VI § 602 claim has the same negative result.

II. ADMINSTRATIVE REMEDIES ARE SUFFICIENT TO ASSURE COMPLIANCE WITH TITLE VI § 602

The issue then is how to resolve issues when individuals claim that these projects are being implemented discriminatorily? The

current statutory language and agency regulations provide a mechanism for aggrieved individuals to file a complaint with agency's Office of Civil Rights. 42 U.S.C. 2000-d; CFR 49.21. These agencies are fully able to conduct through investigations and determine whether discrimination exists in the implementation of federally funded projects. Persons who feel aggrieved by a project have an ample administrative remedy.

In Sound Transit's case for example, Save Our Valley, in August 1999, filed a complaint the Department of Transportation and HUD alleging that the design of certain sections of the proposed light rail system had a disparate impact on minority individuals. The FTA's Office of Civil Rights conducted an extensive investigation, including dispatching a 6 person team of investigators to Seattle to investigate the complaint. The multi-disciplinary team included an attorney form the U.S. Justice Department, the FTA Director of the Office of Civil Rights, a Department of Transportation environmental justice policy analyst, the Regional Director of the FTA's Office of Civil Rights and two FTA investigators. This team conducted an extensive investigation, including interviews with the elected officials who made

the decisions, and agency staff form all of the technical disciplines involved. the FTA also interviewed the persons filing the complaint and citizens within the affected communities. Sound Transit was required to submit extensive factual information to the investigators evaluating every aspect of the decisions that were being challenged as discriminatory. The investigation was through and included persons with the expertise to evaluate whether the agency made appropriate and justifiable decisions based on the complex engineering, environmental, financial, and policy factors that lead to the agency's decisions.

This administrative process, however, was never concluded. Save Our Valley chose to withdraw its administrative complaint and instead seek court intervention. The claimed right of a private right of action under Title VI § 602 undermined the administrative remedy contemplated by Congress.

Federal agencies have the congressional mandate to work with local governments and communities to develop solutions in the event there are issues of discrimination. Equipped with funding power and with the technical expertise, federal agencies are in the best position to

resolve complex issues appropriately, not the courts.

CONCLUSION

Allowing a private right of action under Title VI § 602 invites abuse by persons who lose a legitimate policy debate about the efficacy of a project or about one of the myriad trade-offs that must be made in siting large public projects such as transportation systems. A private right of action will permit plaintiffs to find a single negative consequence of a project that impacts members of a protected group more than others and use it as a basis of a Title VI claim. Allowing private individuals to bring such suits without limitation may have the perverse effect of discouraging agencies from attempting to implement beneficial projects in minority communities. The simplest way for local governments to avoid such a claim is to avoid serving minority

communities. The very problem that Title VI was enacted to address – the lack of federal funding for minority communities – will result.

RESPECTFULLY SUBMITTED this 13th day of November, 2000.

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